RECORD AND BRIEFS

Nos. 16-1436 and 16-1540

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IN THE

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,

—v.—

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*,
Respondents.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,

—v.—

HAWAII, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

BRIEF OF *AMICI CURIAE* HUSSAM AYLOUSH, ZAHRA BILLOO, ROBERT McCAW, COREY SAYLOR, JULIA SHEARSON, HASSAN SHIBLY, AND IMRAAN SIDDIQUI IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST[1]

Amici are prominent Muslim American citizens who work for community organizations across the United States and have witnessed the harms from the President's executive orders restricting travel from predominantly Muslim countries. *Amici* have seen increased discrimination, hate speech, and threats of violence as a result of the anti-Muslim animus that underpins this policy. They therefore have "...a unique perspective [and] specific information that can assist the court beyond what the parties can provide." *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (Posner, C.J. in Chambers). *Amici* offer their experiences in support of Plaintiffs-Respondents and in support of affirmance of the circuit court decisions below.

Amici are leaders of the Council on American-Islamic Relations ("CAIR"), the country's largest Muslim civil rights organization, with local chapters throughout the country. Each chapter shares a common mission to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding.

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[1] The parties' letters consenting to the filing of all *amicus* briefs have been filed with the Clerk's office. Pursuant to Supreme Court Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici* or their counsel made a monetary contribution to fund the preparation or filing of this brief. This brief does not purport to represent the position of NYU School of Law.

INTRODUCTION AND SUMMARY OF ARGUMENT

"Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting). The pernicious lesson of Executive Order No. 13,7802 is that discrimination against Muslims is not only acceptable, but officially encouraged under the Trump Administration. Anti-Muslim animus was the motivation for this policy, and that officially-sanctioned discrimination has activated and legitimated additional acts of hatred against Muslims. If this Court does not rule on the merits of this case, the pernicious lesson of the Order will persist.

Amici are prominent American Muslims who are active in affected Muslim communities across the United States. They offer their accounts of how the pernicious lesson of the Executive Order has affected their communities, well beyond the denial of visas. They recount incidents of religious hatred that have taken place in American cities throughout this country since the Order was issued. They describe the discrimination, legitimated by the Order, which continues to feed fears and intimidate their communities.

The Fourth Circuit found that the Order "drips with religious intolerance, animus, and discrimination," and is likely to violate the Establishment Clause of the First Amendment. *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 572; 601 (4th Cir. 2017). The Ninth Circuit held that it likely violates the

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[2] Exec. Order No. 13,780, 82 Fed. Reg. 13209 (Mar. 6, 2017) (hereinafter the "Executive Order" or the "Order").

Immigration and Nationality Act, which forbids discrimination on the basis of nationality. *Hawaii v. Trump*, 859 F.3d 741, 779 (9th Cir. 2017), *cert. granted sub nom., Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017). *Amici* ask the Court to uphold these decisions – to reinforce a corrective lesson – and with the authority of this Court, to reject the stigma sanctioned by President Trump's Executive Order.

Amici seek judicial condemnation of such discrimination and confirmation that it is contrary to the laws and founding principles of this country. While the travel ban is nominally of limited duration, some of its harms have no expiration date. In short, this case is not moot for *Amici*. It is not moot for the American Muslims who have suffered a spike in anti-Muslim discrimination. It is not moot for the more than 85 American mosques that have been vandalized with pro-Trump graffiti. It is not moot for the American victims of anti-Muslim hate crimes, which have surged by 91 percent this year.

In sum, this case is not moot for the millions of American Muslims who continue to be stigmatized by the Executive Order. *Amici* ask this Court to be a good teacher, and to say, clearly and unmistakably, that executive actions based on religious animus are unlawful and repugnant to the Constitution. Neither the country nor the Constitution can tolerate conspicuous silence on this score from the highest Court in the land.

Even if the Court does find the case moot, it should not vacate the decisions below, as proposed by the government. Pet'r Br. at 37-38. Vacatur is an extraordinary equitable remedy and is wholly unjustified in this case. Instead, this Court should uphold the substance of the decisions below. It should

rule on the merits and convey, to President Trump as well as all Americans, that discrimination on the basis of religion will not be tolerated now, or in the future.

ARGUMENT

When granting *certiorari*, the Court instructed the parties to address "[w]hether the challenges to §2(c) became moot on June 14, 2017." *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). Here, the "only conceivable basis for a finding of mootness" is the government's voluntary conduct – a shifting, self-imposed expiration date for implementation of the travel ban in §2(c). In the circumstances of voluntary cessation, a mootness claim requires the Petitioners to bear the heavy burden of persuading the Court that the challenged conduct cannot reasonably be expected to start up again. *Friends of the Earth v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 189 (2000). In addition, the Order falls within an exception to the mootness doctrine as a controversy that is "capable of repetition, yet evading review." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998).

The Order has also inflicted lasting harmful stigma on American Muslims across the country, beyond the denial of visas, which will linger long after any arbitrary expiration date. The remedy for these wrongs is a ruling from this Court upholding, not vacating, the decisions below.

I. The Ban Is "Capable of Repetition, Yet Evading Review"

This is a classic controversy that is "capable of repetition, yet evading review." *Kemna*, 523 U.S. at 17; *S. Pac. Terminal Co. v. Interstate Commerce*

Comm'n, 219 U.S. 498, 515 (1911). There is a longstanding exception to the mootness doctrine for situations where, as here, (1) "the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration," and (2) "'there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.'" *Kemna*, 523 U.S. at 17 (brackets in original) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 481 (1990) (quoting *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (per curium))); *Weinstein v. Bradford*, 423 U.S. 147 (1975). This case squarely satisfies both criteria.

The duration of §2(c) may be too short to be fully litigated before it formally expires. But as Petitioners have already acknowledged, the duration of §2(c) is malleable, has already been extended, and is subject only to the whim of the Executive. Second, Petitioners continue to assert the legality of the ban, which counsels firmly against a finding of mootness. Both factors indicate that the President would be "free to return to his old ways" if given half a chance. *City of Mesquite v. Aladdin's Castle*, 455 U.S. 283, 289 n.10 (1982) (quoting *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953)).

A. The Duration May Be Too Short

As this Court suggested, it is conceivable that §2(c) became moot on June 14, 2017. *Trump*, 137 S. Ct. at 2087. By its own terms, the ban has a 90-day clock that arguably began on March 16. Exec. Order No. 13,780, 82 Fed. Reg. 13209, 13218 (Mar. 6, 2017). Ninety days from March 16 was June 14, 2017. Based on that reckoning, the ban had expired before the Court hears this case.

Nonetheless, it is "well settled that a defendant's voluntary cessation of a challenged practice does not

deprive a federal court of its power to determine the legality of the practice." *City of Mesquite,* 455 U.S. at 289. Rather, "[v]oluntary cessation of challenged conduct moots a case ... only if it is '*absolutely* clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (quoting *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968)); *see also, Davis v. Fed. Election Comm'n*, 554 U.S. 724, 735 (2008) (campaign dispute not moot due to election); *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (same).

Here, Petitioners have already 'clarified' the expiration date once. *See* Effective Date In Executive Order 13780, 82 Fed. Reg. 27965, 27965 (Jun. 14, 2017). President Trump simply decreed that the "effective date of the enjoined provisions ... is delayed or tolled until those injunctions are lifted or stayed," *id.*, an event that did not occur until this Court's grant of *certiorari* on June 26, 2017, when it partially lifted the injunctions below. *Trump,* 137 S. Ct. at 2089. By Petitioners' own watch, the ban would not expire until at least September 24, 2017.

Thus, while the duration of the ban may appear too short by some calculations, it is also extendable at the discretion of the Executive. Indeed, both parties agree that the ban could be extended at any time. Pet'r Br. at 37; Resp't Br. at 26. There is also nothing preventing the President from issuing another version of the edict tomorrow. The Order is therefore demonstrably capable of repetition, if not outright extension.

B. Continuing Assertion of Legality

As this Court has recently recognized, even "...voluntary cessation of a challenged practice does not moot a case unless "subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur...." *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012, 2019 n.1, (2017) (internal citation omitted). Here, far from voluntarily ending the challenged executive order, the President has repeatedly expressed the intention of keeping it in place. Throughout the summer, the "official statements of the President"[3] on Twitter have included the following:

- June 5, 2017 – "That's right, we need a TRAVEL BAN for certain DANGEROUS countries, not some politically correct term that won't help us protect our people!"[4]
- June 13, 2017 – "Well, as predicted, the 9th Circuit did it again – Ruled against the TRAVEL BAN at such a dangerous time in the history of our country. S.C."[5]
- August 18, 2017 – "Radical Islamic Terrorism must be stopped by whatever means necessary!

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[3] *See* Mark Moore, *Spicer: All of Trump's tweets are his official statements*, N.Y. Post (Jun. 6, 2017), *available at* http://nypost.com/2017/06/06/spicer-all-of-trumps-tweets-are-his-official-statements/.

[4] @realdonaldtrump, Twitter (Jun. 5, 2017, 9:20 PM), https://twitter.com/realdonaldtrump/status/871899511525961728.

[5] @realdonaldtrump, Twitter (Jun. 13, 2017, 6:44 AM), https://twitter.com/realdonaldtrump/status/874578159676665857.

> The courts must give us back our protective rights. Have to be tough!"[6]

President Trump continues to assert that the challenged Executive Order is legal and necessary. There is, thus, a "reasonable expectation" based on a "demonstrated probability" that "the same controversy will recur involving the same complaining party." *Wisconsin Right to Life*, 551 U.S. at 463 (internal citation omitted).

Faced with the President's ongoing enthusiastic defense of the Executive Order, there can be no assurance that the religiously discriminatory policy underlying it will not be re-implemented. *See Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 719 (2007). This is a textbook example of a controversy capable of repetition yet evading review.

II. Continuing Effects and Lasting Harms

In addition to the "tangible" harms inflicted on family and friends of visa applicants, the animus embodied by the Executive Order and President Trump's public justifications for it have had collateral consequences for American Muslims that continue to this day. These injuries do not stem from a visa denial, but they are nonetheless "concrete" under this Court's precedents. See *Spokeo v. Robins*, 136 S. Ct. 1540, 1549 (2016) (citing *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993)); see also *Turner v. Rogers*, 564 U.S. 431, 439 (2011) ("release from prison does not moot a criminal case because 'collateral consequences' are presumed to continue") (citing *Sibron v. New York*, 392 U.S. 40, 57 (1968)

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[6] @realdonaldtrump, Twitter (Aug. 18, 2017, 9:06 AM), https://twitter.com/realdonaldtrump/status/898531481185689600.

(holding that "a criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction.")); *Kemna*, 523 U.S. at 7-8 (same).

The impact of the Executive Order extends beyond the immigration context to a branding of Muslims as terrorists, precipitating an increase in incidents of anti-Muslim discrimination and hate speech, as well as threats of violence explicitly tied to the Executive Order. Accordingly, this Court should uphold the injunctions below in order to "eradicate the effects" of the Executive's past conduct on the present. *Rezaq v. Nalley*, 677 F.3d 1001, 1009 (10th Cir. 2012) (quoting 13C Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3533.7 (3d ed. 2008)).

As illustrated by *Amici* below, this case is far from moot. The Executive Order continues to stigmatize American Muslims, spurring vitriol and vile insults assaulting their faith while legitimizing discrimination. This case will not be moot unless and until these the effects have been "completely and irrevocably eradicated." *Comer v. Cisneros*, 37 F.3d 775, 800 (2d Cir. 1994). *Amici* demonstrate that the ban may go away, but the stigma will stay. This case therefore cries out for a decision on the merits, a pronouncement from the highest court in the country that orders violating the First Amendment will not go unchecked by the judiciary.

A. Corey Saylor – Washington, D.C.

Corey Saylor is a resident of Virginia and works at the headquarters of the Council on American-Islamic Relations ("CAIR") as its Director of the Department to Monitor and Combat Islamophobia.

Corey has monitored anti-Muslim incidents since 1998, using data reported by CAIR offices across the country. The data collected by CAIR indicates that the issuance of the travel ban has coincided with an unprecedented 91 percent surge in hate crimes against Muslims in the United States through June 2017.

Spikes in anti-Muslim sentiment are predictably common in at least two circumstances: after a terrorist attack, and around an election cycle. In 2016, Corey documented a 44 percent increase in anti-Muslim hate crimes from the previous year. But in the past, anti-Muslim sentiment has returned to more 'normal' levels after an election cycle. Instead, anti-Muslim hate crimes have spiked by 91 percent.[7] In the first half of 2017, there have been 85 anti-Islamic incidents at mosques, more than any year between 2009 and 2015.[8] These incidents include 24 cases of property damage and vandalism, 30 cases of intimidation, and four instances of alleged anti-Muslim bias in rejecting proposals to build mosques. *See* Christopher Ingraham, *American mosques – and American*

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[7] *2017 on Track to Becoming One of the Worst Years Ever for Anti-Muslim Hate Crimes*, CAIR (Jul. 19, 2017), https://goo.gl/MJkQdH, (70 hate crimes reported in the first half of 2016); CAIR, *The Empowerment of Hate: Civil Rights Report 2017* (2017), *available at* https://goo.gl/Uq59tq; CAIR, *Civil Rights Data Quarter One Update: Anti-Muslim Bias Incidents January – March 2017* (May 2017), *available at* https://goo.gl/X43YgU (65 hate crimes reported in Q1); CAIR, *Civil Rights Data Quarter Two Update: Anti-Muslim Bias Incidents April – June 2017* (July 2017), *available at* https://goo.gl/XhzZdd (69 hate crimes reported in Q2) (134 hate crimes reported in 2017's Q1-Q2 as compared to 70 in 2016's Q1-Q2).

[8] *Id.*

Muslims – are being targeted for hate like never before, Wash. Post (Aug. 8, 2017);[9] *see also* CAIR, *The Empowerment of Hate* (2017).

In sum, based on CAIR's data and Corey's analysis, the Trump Administration's travel and visa restrictions continue to fuel anti-Muslim sentiment and hate crimes to an extent never seen before.

B. Imraan Siddiqui – Arizona

Imraan Siddiqui lives in Arizona where he works as the executive director of CAIR's Arizona chapter. In this capacity, he oversees the organization's services to the Arizona Muslim community, including legal and advocacy work focused on defending the civil rights of Muslims and challenging anti-Muslim activity. Imraan is also very active on social media, particularly within the Muslim community across the country.

Imraan observed that Executive Order 13,769 – the initial version that first established the ban[10] – triggered social media scorn against Muslims and Islam from those who supported the Trump Administration's travel and visa restrictions. On Twitter, individuals opposed to the ban organized many of their postings via the hashtag #NoBanNoWall. In response to these efforts, individuals who embraced the travel ban coined the hashtag #YesBanYesWall to organize their own postings, which used the arrival of the ban as a vehicle

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[9] *Available at* https://www.washingtonpost.com/news/wonk/wp/2017/08/08/american-mosques-and-american-muslims-are-being-targeted-for-hate-like-never-before.

[10] Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Mar. 6, 2017).

to justify expressions of contempt for Muslims and Islam.

A representative refrain was to denigrate Muslims as somehow inherently deviant while embracing the ban as a protection against that deviance. For example, one user posted the following two days after the first executive order establishing the ban: "When one says #NoBanNoWall, I imagine they are ok with young children being assaulted by sexually repressed Muslims. #YESbanYESwall."[11] Others used the order to advocate for the exclusion of Islam in America: "Hey ho, hey ho, Islam has got to go!"[12] Still others heaped scorn on the Muslim community and its religion categorically: "...#YesBanYesWall[,] Fuck you and fuck #islam."[13] In short, the ban provided a validating platform for individuals to openly express animosity towards Islam and Muslims.

On March 6, 2017, after President Trump signed Executive Order 13,780, individuals on Twitter used the hashtag #banislam to organize their anti-Muslim postings. One individual "thank[ed]" President Trump for keeping us safe" using the #banislam hashtag, and exclaimed "No Rapefugees!!"[14] Another individual

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[11] @EladHutch, Twitter (Jan. 28, 2017, 9:58 PM), https://twitter.com/EladHutch/status/825583961791414272.

[12] @Velvethammer, Twitter (January 29, 2017) https://twitter.com/velvethammer/status/825581260391133184.

[13] @Will_TrashDove, Twitter (Jan. 29, 2017. 1:43 AM), https://twitter.com/Will_TrashDove/status/82564044668890316. *Amici* do not wish to offend the Court with obscene quotes, but believe it is important to provide an accurate account of the vitriol Muslims continue to encounter related to the ban. *See Cohen v. California*, 403 U.S. 15, 16 (1971).

[14] @Uluvsaz, Twitter (Mar. 6, 2017, 3:13 PM), https://twitter.com/uluvsaz/status/838890400458866693.

linked to an article regarding the signing of the Order and commented: "#banislam FOREVER."[15] Others used the Order as an occasion to suggest the unique deviance of Islam — claiming that Muslims are inherently "violent" and that they "kill" and "rape." While anti-Muslim hate speech is not new, what stands out for Imraan is the degree to which it was linked to a specific policy adopted by a U.S. administration and fed by the statements of a sitting American president.

C. Hussam Ayloush – Anaheim, California

Hussam Ayloush has been the executive director of CAIR's Los Angeles chapter ("CAIR-LA") since 1998. Hussam oversees various efforts to advocate for and defend the rights of Muslims in the Greater Los Angeles Area. His office provides legal services to Muslim immigrants as well as individuals discriminated against because of their Islamic beliefs and practices — two groups particularly implicated by the Trump Administration's travel ban.

Since the executive orders took effect, the CAIR-LA office has received, in Hussam's estimation, triple the amount of electronic and regular mail compared to 2016. These messages often express vulgar anti-Muslim views, regularly refer to the ban to justify their bigotry, and indicate that the Trump Administration's policies have bolstered their anti-Muslim views. In one particularly shocking instance, Hussam received an email in July 2017 with the subject line "Muslim sewer rats." The email went on to call Hussam "Muslim PIG SWINE" and claimed that there were millions of "PATROITS [sic] armed to

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[15] @o_MIRACLE_o, (Mar. 6, 2017, 12:30 PM), https://twitter.com/o_MIRACLE_o/status/838849326524870660.

the teeth with HUNDREDS of millions of weapons, with literally over 50 BILLION rounds of horrific, violent camel jockey piercing rounds of ammo." Tellingly, in threatening war against Hussam and the Muslim community, the sender noted that "We have a LEADER in the White House, now standing for JUDEO-Christian values."

As the executive director of CAIR-LA, Hussam has witnessed firsthand how President Trump's executive orders have amplified anti-Muslim sentiment, as the above message exemplifies. The orders have been interpreted as lending the credibility and stature of the White House to the notion that Muslims must be excluded from America.

D. Zahra Billoo – San Francisco, California

Zahra is the executive director of CAIR's San Francisco chapter ("CAIR-SFBA"), which provides legal services to the Muslim community, educates Muslims and others about their rights, and works with allies on shared social justice and civil rights goals. She has served as the director for eight years.

Zahra monitored the 2016 presidential campaign as well as the Trump Administration's efforts to prevent visitors from Muslim countries from coming to the U.S., both of which contributed to a social climate of fear and intimidation in the Bay Area. Through her work with Muslim community members, Zahra has heard directly from individuals targeted in hate incidents that make up the 91% spike documented by CAIR.

The day after the November 2016 election, for example, a visibly Muslim college sophomore was walking to her car when a man grabbed her hijab from

behind and pulled her back towards him. She was able to fight off the attacker but fell hard to her knees.

In another incident, during April 2017, at a town hall hosted by a Bay Area elected official, CAIR-SFBA's government affairs director spoke as a panelist and attempted to address the anti-Muslim sentiment that had increased and hardened since President Trump issued the travel ban. But as she began speaking, the crowd shouted her down, chanting in unison that she "denounce terrorism" and "denounce Sharia Law." The vitriol aimed at Zahra's employee was so threatening that police escorted her to her vehicle.

These types of incidents, in addition to the overall increase in hate crimes targeting Muslims reported by her colleagues at CAIR and in the press, led Zahra to fear for the safety of her fellow Bay Area Muslims, her employees, and herself. Zahra views incidents like this as reflecting the same anti-Muslim message endorsed by the Trump Administration in creating the travel ban.

E. Hassan Shibly – Florida

Hassan Shibly is executive director of CAIR's Florida chapter ("CAIR-FL"). Since the announcement of the ban, his office has seen a marked marked increase in the reporting of hate crimes against Muslims. In the aftermath of the ban, individuals called several mosques in Florida and threatened to bomb them. In one instance, during April 2017, a man threatened a Muslim family at gunpoint and shouted anti-Muslim slurs at them. "I'm going to kill all you Muslim motherfuckers, get out of my country."[16]

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[16] Dan Scanlan & Garrett Pelican, *Police: Armed with Guns and Racial Insults, Jacksonville Man Assaults Muslim Neighbor,*

Many of the hate crimes committed against Muslims in Florida, like the one described above, reference excluding Muslims from the United States. They draw support from the unmistakable message broadcast by the ban, and it is no coincidence that the increase in anti-Muslim hate crimes immediately followed the travel ban executive orders. Simply put, the message sent by the executive orders has frightfully altered the political landscape for Muslims in Florida.

F. Robert McCaw – Northern Virginia

Robert McCaw is the Director of Government Affairs for CAIR National, the nation's largest Muslim civil rights organization. Robert works with CAIR chapters throughout the country to increase Muslim civic participation. Because CAIR National's office is in Washington DC, and Robert lives nearby in Northern Virginia, his work and personal life have immersed him in the life of the Muslim community in and around the capital.

When President Trump signed the first travel ban order in January 2017, Robert was outside the country with a relative, who is a green card holder originally from Bangladesh, a country not affected by the order. Even though the order did not technically apply to Robert's relative, they saw it as being targeted at Muslims and were concerned that it would affect their ability to reenter the United States.

In another instance, a different family member, who wears hijab and has a South Asian complexion, was attempting to enter the U.S. when a customs official asked his colleague: "Why is she even here?" Robert

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jacksonville.com (Apr. 4, 2017, 9:24 p.m.), http://jacksonville.com/news/public-safety/2017-04-04/police-armed-guns-and-racial-insults-jacksonville-man-assaults-muslim.

understood the question as an indication that the customs official understood the travel ban as a directive to target Muslims. The question itself was an expression of anti-Muslim sentiment.

Based on his work with CAIR, Robert is also familiar with the tenor and frequency of hate mail that CAIR receives. Starting in January 2017, the messages CAIR received began to draw inspiration and justification from the travel ban order. For example, in May 2017, CAIR received correspondence that explained that "Trump is our president" and that "[b]y putting Trump in office we the people have spoken, and we the people believe that any Muslims who cannot assimilate to the American way of life, can just get the fuck out of our country!!" The sender went on to articulate the type of assimilation expected which would involve, in part, an abandonment of Islamic practice: "We here in America love pork, bacon, Christmas, Easter, bikinis, etc."

Another email from August 2017 proclaimed: "Now that Donald is president there, your religion of death & war is being exposed for its drive for martyrdom." And in June 2017, a sender asserted that the prophet of Islam was "a pig fucking pervert and a drunk," that the sender was "middle America and we are armed and ready," and that the "[d]eportations will be starting soon." The reference to deportations is a clear reference to the travel ban. In each instance, Robert understood the authors of these messages to draw support from Trump Administration's travel and visa restrictions and all of the anti-Muslim sentiment they embolden.

G. Julia Shearson – Cleveland, Ohio

Julia Shearson is the executive director of CAIR's Cleveland chapter. Based on her professional

experience, President Trump's travel ban orders have encouraged anti-Muslim discrimination and anti-Muslim violence in Ohio. From Julia's perspective, the temporal sequence is telling: the executive orders precipitated an unmistakable rise in anti-Muslim activity.

On April 24, 2017, an anti-Muslim group called "ACT for America" sponsored a speech in Cleveland by Robert Spencer, a well-known purveyor of anti-Muslim myths. During the event, Spencer used the executive orders as a way to demonstrate that Muslims and Islam are dangerous.

The title of Spencer's talk was "The Truth about the War We're in."[17] He delivered his remarks to an engaged audience in Northeast Ohio, explaining that the travel ban is necessary given the unique challenges of 'vetting' Muslim travelers and immigrants. Spencer attributed the inability to vet Muslims to Islam itself, claiming that Islam contains in it a theological command to Muslims to deceive government officials in order to gain entry to the United States. Lying to gain entry to the United States, claimed Spencer, was viewed by Muslims as an "active virtue" and Muslims believe they are "serving their god by disassembling [sic]."[18]

The executive orders have provided this anti-Muslim speaker, and anti-Muslim activists in general, with government-endorsed legitimacy, which gives them the ability to deepen and foment anti-Muslim

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[17] KRoseVideo, *Robert Spencer at ACT Cleveland 24apr2017*, YouTube (May 6, 2017), https://www.youtube.com/watch?v=sRQDc9YvgfQ.

[18] *Id.*

sentiment and gives credibility to other efforts to turn anti-Muslim sentiment into anti-Muslim action.

III. Vacatur Is Not Warranted

In the event that the Court finds that these cases are moot, it should not vacate the decisions below. Vacatur is a form of equitable relief, and Petitioners have the burden of showing their "equitable entitlement to the extraordinary remedy of vacatur." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26 (1994). As always, when federal courts contemplate equitable relief, the determination:

> ... must also take account of the public interest. "Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur."

U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship, supra, 513 U.S. at 26-27 (citing *Kaisha v. U.S. Philips* Corp., 510 U.S. 27, 40 (1993) (Stevens, J., dissenting)).

Judicial decisions are not only valuable to the legal community; they are valuable to the nation as a whole:

> [O]ne of the social values of litigation is the resolution of uncertainty in the law. This resolution is important not merely for its legal effect in subsequent lawsuits, but for its social impact as well. Judicial decisions influence our perception of what is right and wrong. A decision like that in Brown v. Board of Education decides more than the issue of the legality of a segregated public school system in Kansas."

Jill E. Fisch, *Rewriting History: The Propriety of Eradicating Prior Decisional Law Through Settlement and Vacatur*, 76 Cornell L. Rev. 589, 630 (1991) (footnotes omitted).

Petitioners have ignored the public interest and offered nothing to show how vacatur would serve it. *See* Pet'r Br. At 37-38. In fact, vacating the decisions below would disserve the public interest by sending a signal that the Executive Order was lawful. It would feed and validate anti-Muslim sentiment in this country.

CONCLUSION

For the reasons set forth above, *Amici* urge this Court to conclude that these cases are not moot and that the decisions of the Courts of Appeals should be affirmed. In the alternative, if this Court concludes that the cases are moot, the decisions of the Courts of Appeals should not be vacated.

For *Amici*, it is critical that this Court uphold the precedents set by the Fourth and Ninth Circuits, enjoining the order for what it is and always has been: a pernicious government lesson, stigmatizing Muslims and legitimizing Islamophobia.

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